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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,795	12/09/2003	Terry S. Bienstock	007412.00101	4949

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BANNER & WITCOFF , LTD
ATTORNEYS FOR CLIENT NUMBER 007412
1100 13th STREET, N.W.
SUITE 1200
WASHINGTON, DC 20005-4051

EXAMINER	
PARRA, OMAR S	

ART UNIT	PAPER NUMBER
2421	

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03/15/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/731,795	BIENSTOCK, TERRY S.	
	Examiner	Art Unit	
	OMAR PARRA	2421	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01/04/2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 01/04/2011 have been fully considered but they are not persuasive.

Applicant argues that:

"*Podar merely discusses that local news can preempt national programming.1 Podar merely teaches that local news conditionally preempts national programming, in which it is possible to preempt programming. However, preemption, as taught by Podar, is not a certainty*", Remarks section page 8. To this matter, the examiner respectfully disagrees.

Podar clearly teaches that the system can (has the capability or it's capable) preempt national programming with local produced content (col. 2 lines 56-67). However, applicant argues that Podar's preemption is not a certainty. In other words, the preemption of the national programming with local news may or may not happen. However, following applicant's interpretation as being uncertain, whenever preemption occurs, the claim's limitation is met.

Additionally, the claim language calls for 'determining that the locally produced PEG programming is available and intended for local transmission...". In other words, applicant's local content is not always transmitted; it has to be available and also has to be *intended for transmission*. Podar, clearly teaches preempting the local content when it is intended to be inserted (col. 2 lines 56-67)

Therefore, the examiner respectfully believes that the art of record covers applicant's invention as claimed.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims **18 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenworthy (Pub. No. 2004/0255333) in view of Podar et al. (hereinafter 'Podar', Patent No. 7,549,160).

Regarding claim 18, teaches a method for use in a distribution network the method comprising:

providing a channel in a channel lineup for a local area **([0041]; [0047]; [0048])**;

providing backdrop programming on the channel **(the general local interest content from central aggregation headend through interface 112; [0022]-[0024]; [0035]; [0038])**;

determining an availability of locally produced programming; and determining that the locally produced programming is available and intended for local transmission, preempting the backdrop programming and providing the locally produced programming

on the channel (**Kenworthy teaches that the content produced locally (including content for local channels, advertising, video-on-demand, etc) is introduced to the received national bundle from the national headend ([0030]-[0032]; [0041]-[0044]**).

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content.

However, in an analogous art, Podar teaches a distribution system that provides video content to the end users (subscribers, col. 2 lines 47-58). Podar teaches that local content (channels or content that spotlight local cultural events, local news, and other local activities, col. 2 lines 61-64; col. 3 lines 36-48) preempts national content (col. 2 lines 56-67). It is inherent that for the local content to preempt national content, it must exist or be available.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kenworthy's invention with Podar's feature of unconditionally preempting local content to content received from a national headend for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Regarding claim 19, Kenworthy teaches a method for use in distribution network, the method comprising:

providing a channel in the channel lineup for each local area **([0041]; [0047]; [0048]). This is performed on multiple local areas, markets A-C, Figs. 1, Abstract)**;

providing backdrop programming on each channel **(the general local interest content from central aggregation headend through interface 112; [0022]-[0024]; [0035]; [0038])**;

for each local area **(This is performed on multiple local areas, markets A-C, Figs. 1, Abstract)**, determining an availability of locally produced PEG programming; and determining that the locally produced programming is available and intended for local transmission in a particular local area having the channel, preempting the backdrop programming and providing the locally produced programming on the channel in the particular local area (**Kenworthy teaches that the content produced locally (including content for local channels, advertising, video-on-demand, etc) is introduced to the received national bundle from the national headend ([0030]-[0032]; [0041]-[0044]**).

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content.

However, in an analogous art, Podar teaches a distribution system that provides video content to the end users (subscribers, col. 2 lines 47-58). Podar teaches that local content (channels or content that spotlight local cultural events, local news, and other local activities, col. 2 lines 61-64; col. 3 lines 36-48) preempts national content (col. 2

lines 56-67). It is inherent that for the local content to preempt national content, it must exist or be available.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kenworthy's invention with Podar's feature of unconditionally preempting local content to content received from a national headend for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

4. Claims **1-17 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenworthy (Pub. No. 2004/0255333) in view of Podar et al. (hereinafter 'Podar', Patent No. 7,549,160) in further view of Hane (Pub. No. 2006/0041921).

Regarding claim 1, Kenworthy teaches a method for use in a distribution network, the method comprising:

providing a channel in a channel lineup for a local area **([0041]; [0047]; [0048])**;

providing backdrop programming **(the general local interest content from central aggregation headend through interface 112; [0022]-[0024]; [0035]; [0038])**;

determining an availability of locally produced programming; and determining that the locally produced programming is available and intended for local transmission, preempting the backdrop programming and providing the locally produced programming on the channel (**Kenworthy teaches that the content produced locally (including content for local channels, advertising, video-on-demand, etc) is introduced to**

the received national bundle from the national headend ([0030]-[0032]; [0041]-[0044]).

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content.

However, in an analogous art, Podar teaches a distribution system that provides video content to the end users (subscribers, col. 2 lines 47-58). Podar teaches that local content (channels or content that spotlight local cultural events, local news, and other local activities, col. 2 lines 61-64; col. 3 lines 36-48) preempts national content (col. 2 lines 56-67). It is inherent that for the local content to preempt national content, it must exist or be available.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kenworthy's invention with Podar's feature of unconditionally preempting local content to content received from a national headend for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Additionally, although Kenworthy and Podar teach that the locally produced content is public and educational (Podar: col. 3 lines 33-47), they do not explicitly teach that the locally produced content is governmental content.

However, in an analogous art, Hane teaches a system and method for distributing national and locally produced content, where availability of local or regional content is checked and inserted to be presented to the users after a commitment of

transmission (Abstract; [0050]-[0051]; [0057]-[0058]; [0067]-[0070]). The content is not limited to ads as used in the cited example, but locally produced news updates, political content programs, data, etc ([0043]-[0045]; [0076]-[0078]). Additionally, Hane teaches that any person or entity is able to post content but after approval ([0043]-[0045];[0076]-[0078]; [0081]).

Therefore, it would have been obvious to an ordinary skilled in the art at the time of the invention to have modified the feature of Kenworthy and Podar's invention with Hane's feature of checking for locally produced PEG content and insert it to the national content for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Regarding claims 2 and 9, Kenworthy, Podar and Hane teach wherein the locally produced PEG programming is created via local public access to the distribution network **(Hane: [0076]-[0078]).**

Regarding claims 3 and 10, Kenworthy, Podar and Hane teach wherein the locally produced PEG programming is created via educational access to the distribution network **(Hane: [0043]-[0045]; [0076]-[0078]).**

Regarding claims 4 and 11, Kenworthy, Podar and Hane teach wherein the locally produced PEG programming is created via local governmental access to the distribution network **(Hane: [0043]-[0045]; [0076]-[0078]).**

Regarding claims 5 and 12, Kenworthy, Podar and Hane teach wherein the distribution network encompasses a plurality of local areas, wherein (PEG) programming is provided on the PEG channel to the local and wherein the backdrop programming general local interest programming is provided on PEG channels for multiple local areas **(Kenworthy: [0024]; [0038])**.

Regarding claims 6 and 13, Kenworthy, Podar and Hane teach wherein the distribution network includes a video on demand (VOD) platform, the VOD platform including a library of locally produced PEG programming, the method further comprising providing locally produced PEG programming on demand with the VOD platform, wherein the locally produced PEG programming on demand is selectable by an end user **(Hane: The local content to be inserted to the cable programming can be on-demand, [0058]. All the local content is stored in local databases, [0058]. Kenworthy: [0041]; [0045], where being the content on demand for the user, it is inherent that the content is selectable by the user)**.

Regarding claims 7 and 14, Kenworthy, Podar and Hane teach wherein the distribution network includes a high speed data (HSD) platform, the HSD platform including a library of locally produced PEG programming, the method further comprising providing locally produced PEG programming on demand with the HSD platform, wherein the locally produced PEG programming on demand is selectable by an end

user (**Kenworthy: [0041]; [0045], where being the content on demand for the user, it is inherent that the content is selectable by the user. Hane: 20, Fig. 1; [0036]; [0043]; [0058]. All the local content is stored in local databases, [0058]).**

Regarding claim 8, Kenworthy teaches a method for use in distribution network, the method comprising:

providing a channel in the channel lineup for each local area (**[0041]; [0047]; [0048]. This is performed on multiple local areas, markets A-C, Figs. 1, Abstract**);

providing backdrop programming on each channel (**the general local interest content from central aggregation headend through interface 112; [0022]-[0024]; [0035]; [0038]**);

for each local area (**This is performed on multiple local areas, markets A-C, Figs. 1, Abstract**), determining an availability of locally produced PEG programming; and determining that the locally produced programming is available and intended for local transmission in a particular local area having the channel, preempting the backdrop programming and providing the locally produced programming on the channel in the particular local area thereby.

channel (**Kenworthy teaches that the content produced locally (including content for local channels, advertising, video-on-demand, etc) is introduced to the received national bundle from the national headend ([0030]-[0032]; [0041]-[0044]**).

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content.

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content.

However, in an analogous art, Podar teaches a distribution system that provides video content to the end users (subscribers, col. 2 lines 47-58). Podar teaches that local content (channels or content that spotlight local cultural events, local news, and other local activities, col. 2 lines 61-64; col. 3 lines 36-48) preempts national content (col. 2 lines 56-67). It is inherent that for the local content to preempt national content, it must exist or be available.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kenworthy's invention with Podar's feature of unconditionally preempting local content to content received from a national headend for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Additionally, although Kenworthy and Podar teach that the locally produced content is public and educational (Podar: col. 3 lines 33-47), they do not explicitly teach that the locally produced content is governmental content.

However, in an analogous art, Hane teaches a system and method for distributing national and locally produced content, where availability of local or regional

content is checked and inserted to be presented to the users after a commitment of transmission (Abstract; [0050]-[0051]; [0057]-[0058]; [0067]-[0070]). The content is not limited to ads as used in the cited example, but locally produced news updates, political content programs, data, etc ([0043]-[0045]; [0076]-[0078]). Additionally, Hane teaches that any person or entity is able to post content but after approval ([0043]-[0045];[0076]-[0078]; [0081]).

Therefore, it would have been obvious to an ordinary skilled in the art at the time of the invention to have modified the feature of Kenworthy and Podar's invention with Hane's feature of checking for locally produced PEG content and insert it to the national content for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Regarding claim 15, Kenworthy teaches an apparatus (with respective method) for signal distribution in a distribution network **(115, Fig. 3)** comprising:

an interface that is configured to receive backdrop programming from a first source and to receive locally produced content from a second source **(308, Fig. 3 receives the general local interest content from central aggregation headend through interface 112 and locally produced content from local content providers 108 and 202, Fig. 3 through 107, 314 and 316; [0042]-[0043])**;

a processing module **(network management system, 402)** configured to be connected to the interface and configured to perform:

providing a channel in a channel lineup for a local area **([0041]; [0047]; [0048])**;

providing the backdrop programming on the channel from the first source **(the general local interest content from central aggregation headend through interface 112; [0022]-[0024]; [0035]; [0038])**;

determining an availability of the locally produced content from the second source; and determining that the locally produced content is available and intended for local transmission, preempting the backdrop programming and providing the locally produced content on the channel (**Kenworthy teaches that the content produced locally (including content for local channels, advertising, video-on-demand, etc) is introduced to the received national bundle from the national headend ([0030]-[0032]; [0041]-[0044]**).

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content.

However, in an analogous art, Podar teaches a distribution system that provides video content to the end users (subscribers, col. 2 lines 47-58). Podar teaches that local content (channels or content that spotlight local cultural events, local news, and other local activities, col. 2 lines 61-64; col. 3 lines 36-48) preempts national content (col. 2 lines 56-67). It is inherent that for the local content to preempt national content, it must exist or be available.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kenworthy's invention with Podar's feature of unconditionally preempting local content to content received from a national headend

for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Additionally, although Kenworthy and Podar teach that the locally produced content is public and educational (Podar: col. 3 lines 33-47), they do not explicitly teach that the locally produced content is governmental content.

However, in an analogous art, Hane teaches a system and method for distributing national and locally produced content, where availability of local or regional content is checked and inserted to be presented to the users after a commitment of transmission (Abstract; [0050]-[0051]; [0057]-[0058]; [0067]-[0070]). The content is not limited to ads as used in the cited example, but locally produced news updates, political content programs, data, etc ([0043]-[0045]; [0076]-[0078]). Additionally, Hane teaches that any person or entity is able to post content but after approval ([0043]-[0045];[0076]-[0078]; [0081]).

Therefore, it would have been obvious to an ordinary skilled in the art at the time of the invention to have modified the feature of Kenworthy and Podar's invention with Hane's feature of checking for locally produced PEG content and insert it to the national content for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

Regarding claim 16, Kenworthy, Podar and Hane teach wherein:

the interface is configured to connect to a video on demand (VOD) platform, the VOD platform including a library of locally produced programming; and the processing

module is further configured to perform providing locally produced programming on demand with the VOD platform, the locally produced programming on demand being selectable by an end user **(Kenworthy: [0041]; [0045], where being the content on demand for the user, it is inherent that the content is selectable by the user. Said content is stored at server 328, Fig. 3)**.

Regarding claim 17, Kenworthy, Podar and Hane teach wherein:

the interface is configured to connect to a high speed data (HSD) platform, the HSD platform including a library of locally produced programming **([0041]; where all local content, including video-on-demand stored at server 328, Fig. 3, is connected to the fiber 'last mile' –which is a high speed data medium- that serves/connects subscribers from local headend; [0046])**; and

providing the locally produced programming on demand with the HSD platform, the locally produced programming on demand being selectable by an end user **([0041]; where all local content, including video-on-demand stored at server 328, Fig. 3, is connected to the fiber 'last mile' –which is a high speed data medium- that serves/connects subscribers from local headend; [0046]. Additionally, being the content on the demand to the user, it is inherent that it is user selectable)**.

The limitation where the local content is PEG content was addressed at the rejection of claim 15 above.

Regarding claim 20, Kenworthy, Podar and Hane teach further comprising independently preempting the backdrop programming for a different local area **(Podar: col. 2 lines 58-66, where the content is differentiated, or community/group focused).**

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMAR PARRA whose telephone number is (571)270-1449. The examiner can normally be reached on 9-6 PM (M-F, every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Sheleheda/
Primary Examiner, Art Unit 2424

OP